

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: AIRPORT

AGENDA DATE: April 19, 2005

CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E. – 780-4724

DISTRICT(S) AFFECTED: 3

SUBJECT:

AUTHORIZE the City Manager to sign a Lessor's Approval of Assignment of Air Cargo Center Agreement from Menlo Worldwide Forwarding fka Emery Air Freight (Assignor) to BT Property, LLC (Assignee) for office and warehouse space, loading dock, parking aprons, and vehicle parking area at the Air Cargo Center, 301 George Perry Blvd.

BACKGROUND / DISCUSSION:

BT Property, LLC, a wholly owned subsidiary of UPS Supply Chain Solutions, has merged with Menlo Worldwide and has requested that the City approve an assignment of the above referenced lease to BT in conjunction with this merger. The existing term of this lease expires October 31, 2009 with two options available, extending the term to a maximum of October 31, 2015. The existing rent is \$428,197.44 annually. The first rental adjustment will take effect November 1, 2005 when the annual rent will increase to \$461,017.18.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? If so, when?

No.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A. This is a revenue generating lease.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A.

This Lessor's Approval of Assignment of Air Cargo Center Agreement was presented to the Airport Advisory Board on March 17, 2005 and was approved unanimously.

COUNCIL ACTION REQUIRED: City Council did not delegate the authority to sign airport leases, concession agreements or operating agreements.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required)


Sylvia Borunda Firth, Asst. City Attorney

FINANCE: (if required)

OTHER:

Patrick T. Abeln, A. A. E., Director of Aviation
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment by and between the City of El Paso ("Lessor") and Menlo Worldwide Forwarding, Inc. f/k/a Emery Air Freight Corporation ("Assignor") and BT Property, LLC (Assignee") for office and warehouse space, loading dock, parking aprons, and vehicle parking area at the Air Cargo Center, 301 George Perry Blvd., Suite A, El Paso, Texas.

ADOPTED this the 19th day of April 2005.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A. A. E.
Director of Aviation

ORIGINATING DEPARTMENT: AIRPORT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

The City of El Paso ("Lessor") entered into an Air Cargo Center Agreement dated September 1, 2000 ("Agreement"), between the Lessor and Emery Air Freight Corporation, now known as Menlo Worldwide Forwarding, Inc. ("Assignor") covering the following described leased premises:

- A. That certain office and warehouse space containing 44,044 square feet, more or less, as shown on Exhibit A attached to the Agreement, and also known as Air Cargo Center, 301 George Perry Blvd., Suite A; El Paso, Texas and**
- B. The exclusive right to use the loading dock and 18,200 square feet, more or less, of vehicle parking space directly in front of said Air Cargo Center as shown on Exhibit A attached to the Agreement; and**
- C. The non-exclusive right to use 130,084 square feet, more or less, of the aircraft parking apron and ground service equipment parking apron directly behind said Air Cargo Center as shown on Exhibit A attached to the Agreement; and**
- D. The non-exclusive right to use a portion of the vehicle parking area, and the roadway, located in front of and adjacent to said Air Cargo Center, such portion to be commensurate with Lessee's share of warehouse and office space as to that leased to the tenants that share common use of this vehicle parking area, as shown on Exhibit B attached to the Agreement;**

all of which will hereinafter be referred to as the "Premises" or "Leased Premises".

- 1. CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Agreement from Assignor to BT Property, LLC, a Delaware Limited Liability Company ("Assignee"), on the condition that Assignee

assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Agreement from and after the effective date of the assignment of the Agreement to Assignee, and upon the further condition that Assignee agree to accept and abide by all the terms, covenants, and conditions of the Agreement.

2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Agreement and expressly agrees to be bound by the indemnification provisions contained in the Agreement.
3. **GUARANTOR.** UPS Supply Chain Solutions guarantees payment of rent to the Lessor and shall remain fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under the Agreement.
4. **RATIFICATION OF AGREEMENT.** No provision of this consent alters or modifies any of the terms and conditions of the Agreement. Except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.
5. **ADDRESS FOR NOTICE.** Notices to Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

BT Property, LLC
Facilities Department
UPS Supply Chain Solutions
12380 Morris Road
Alpharetta, GA 30005
ATTN: Vice President Real Estate

6. **AUTHORIZED REPRESENTATIVE.** The person signing this Lessor's Approval of Assignment on behalf of the Assignee represents and warrants that he or she has the authority legally to bind the Assignee to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.

The parties have executed this Lessor's Approval of Assignment hereto this 19th day of April 2005.

LESSOR: CITY OF EL PASO:

Joyce Wilson
City Manager

APPROVED AS TO FORM:

Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:

Patrick T. Abeln, A.A.E.
Director of Aviation

ATTEST:

Printed Name: _____

**ASSIGNOR: MENLO WORLDWIDE
FORWARDING, INC.
f/k/a/ Emery Air Freight
Corporation**

By: _____
Printed Name: David Baer
Title: Vice President

ATTEST:

Printed Name: _____

ASSIGNEE: BT PROPERTY, LLC

By: _____
Printed Name: David Baer
Title: Vice President

ATTEST:

Printed Name: _____

**GUARANTOR: UPS SUPPLY CHAIN
SOLUTIONS**

By: _____
Printed Name: _____
Title: _____

(ACKNOWLEDGMENTS ON FOLLOWING PAGE)

ACKNOWLEDGEMENT

THE STATE OF Georgia
COUNTY OF DeKalb

This instrument was acknowledged before me on this 28 day of March, 2005, by David O Baer as Vice President of Menlo Worldwide Forwarding, Inc., f/k/a Emery Air Freight Corporation ("Assignor").

Andrew L. Wood
Notary Public, State of Georgia

My Commission Expires:

2/14/09

ACKNOWLEDGEMENT

THE STATE OF Georgia
COUNTY OF DeKalb

This instrument was acknowledged before me on this 28 day of March, 2005, by David Baer as Vice President of BT Property, LLC, a Delaware limited liability company ("Assignee").

Andrew L. Wood
Notary Public, State of Georgia

My Commission Expires: 2/14/09

ACKNOWLEDGEMENT

THE STATE OF Georgia
COUNTY OF DeKalb

This instrument was acknowledged before me on this 28 day of March, 2005, by David Baer as Vice President of UPS Supply Chain Solutions ("Guarantor").

Andrew L. Wood
Notary Public, State of Georgia

My Commission Expires: 2/14/09